

REMARKS

This is a full and timely response to the outstanding final Office Action mailed March 7, 2005. Reconsideration and allowance of the application and pending claims 1-14 are respectfully requested.

I. Claim Rejections - 35 U.S.C. § 102(b) (*Janda*, USPN 3,854,404)

A. Statement of the Rejection

Claims 1-7, 9-12 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by *Janda*. (“*Janda*,” U.S. Pat. No. 3,854,404). Applicants respectfully traverse this rejection.

B. Discussion of the Rejection

It is axiomatic that “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.” *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983)(emphasis added). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b).

In the present case, not every feature of the claims is represented in the *Janda* reference. As recited in independent claim 1, Applicants claim (with emphasis added):

1. An apparatus, comprising:
 - a frame;
 - a swivel mechanism, said swivel mechanism including a foot having a foot pad of a defined frictional coefficient in contact with a support surface, ***the foot pad configured with a material that enables rotation of the frame and impedes translational movement of the foot***; and
 - secondary feet connected to the frame and disposed in locations surrounding the swivel mechanism, said secondary feet each having a

pad of a lower frictional coefficient than the foot pad, wherein said secondary feet pads are configured with a material that enables rotation of the frame when supporting a device on the frame.

Applicants respectfully submit that *Janda* fails to disclose all of the emphasized features. For instance, *Janda* does not disclose a *foot pad* that is *configured with a material that enables rotation of the frame and impedes translational movement of the foot*, as recited in independent claim 1. The Office Action equates the bottom of a gear reduction unit 44 with a “foot pad.” Assuming for the sake of argument this is a valid comparison, which it is not, it is not the material of the gear reduction unit that enables rotation of the frame. Further, it is not the material of the gear reduction unit that impedes translational movement of what the Office Action calls the “foot” (the bottom of the gear reduction unit). Instead, it appears that the entire drive unit 46 is “affixed to and supported on the base 12” (col. 2, lines 44-45), and thus it appears that the impediment to translational movement is by virtue of the means used to affix the drive unit 46 to the base 12, and not the material used. Since *Janda* fails to disclose the emphasized claim features, Applicants respectfully request that the rejection to independent claim 1 be withdrawn.

Additionally, Applicants respectfully submit that the Office Action is not construing claim terms in accordance with their ordinary meaning, which is improper under MPEP 2111.01 (8th Edition, Revision 2). This section of the MPEP cites *Chef America, Inc. v Lamb-Weston, Inc.*, 358 F.3d 1371, 69 USPQ2d 1857 (Fed. Cir. 2004) for the rule of law that “[o]rdinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say.” For example, the Office Action is unclear as to what in *Janda* constitutes a “swivel mechanism.” Assuming it is the

combination of the drive plate 38 and drive shaft 40, such a combination would imply a purposeful, controlled movement when driven by the electric motor 42. *Janda* supports this implication by disclosing (in col. 2, lines 32-37) that the “[D]rive plate 38 is affixed to and rotatable with a drive shaft 40 driven by an electric motor 42 through a gear reduction unit 44 which reduces the speed of the motor 42 so that the drive plate 38 is rotated at a very slow speed such as one-half revolution per minute.” One ordinary meaning of the term “swivel” may be found in Webster’s on-line dictionary, which provides (emphasis added) that a swivel is “a device joining two parts so that one or both can pivot freely (as on a bolt or pin).” Applicants respectfully submit that the drive plate 38 in *Janda* does not appear to pivot freely, but in fact appears to pivot in a controlled manner. Thus, *Janda* fails to disclose a “swivel mechanism” as recited in independent claim 1, and respectfully requests that the rejection to independent claim 1 be withdrawn.

As another example of misconstruing of claim terms according to their ordinary meaning, the Office Action equates a gear reduction unit (44) to a “foot,” as recited in claim 1. Again, as another example of one exemplary, ordinary meaning for the term “foot,” Webster’s on-line dictionary defines a “foot” as “something resembling a foot in position or use: a: as the lower end of the leg of a chair or table.” In other words, there is an implication of support in this definition. Importantly, *Janda* provides (in col. 2, lines 65-68) that “[T]he dimensions of the unit are so designed that none of the weight of the deck 10 or the object which it supports will be exerted on the drive plate 38 or any portion of the drive unit 46.” Thus, *Janda* fails to disclose a “foot,” as recited in independent claim 1, and respectfully requests that the rejection to independent claim 1 be withdrawn.

Another example of misconstruing of claim terms according to their ordinary meaning is found in the Office Action equating a "foot pad" as recited in claim 1 with the bottom of the gear reduction unit 44. Assuming the gear reduction unit 44 could be a "foot" for the sake of argument, to call the bottom of the gear reduction unit a "pad" in nonsensical. Referring again to Webster's as one example definition for a "pad," one definition given is "a thin flat mat or cushion." Although there is no intent to limit the definition to a "flat" or "thin" mat or cushion, by no stretch of the imagination can one construe the bottom of the gear reduction unit as a mat or cushion. Thus, *Janda* fails to disclose a "foot pad" as recited in independent claim 1, and respectfully requests that the rejection to independent claim 1 be withdrawn.

Another example of misconstruing of claim terms according to their ordinary meaning is found in the Office Action equating "secondary feet" to brackets and "pads" to casters 28. Using Webster's definition for a "foot" as one example definition, the brackets are not something resembling a foot in position or use since they are disposed between the deck and the casters (*i.e.*, not in a "foot" position). Also, equating "casters 28" to "pads" is simply a clear example of not construing a claim term according to its ordinary meaning, as a caster is clearly not a thin, flat (or otherwise) mat or cushion. Thus, *Janda* fails to disclose "secondary feet" and "pads" as recited in independent claim 1, and respectfully requests that the rejection to independent claim 1 be withdrawn.

Because independent claim 1 is allowable over *Janda*, dependent claims 2-14 are allowable as a matter of law for at least the reason that the dependent claims 2-14 contain all elements of their respective base claim. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Further, Applicants respectfully submit that the dependent claims are allowable on separate, independent grounds. For instance, with regard to claims 9 and 10, *Janda* does not disclose “wherein said secondary feet are designed to share a load imposed upon the frame with the foot,” as recited in claim 9 (emphasis added), or “wherein the foot supports the majority of the load,” as recited in claim 10 (emphasis added). As discussed in association with independent claim 1, the load in *Janda* is fully supported by the casters (*i.e.*, there is no load sharing) (see col. 2, lines 60-67), and not by the foot. Thus, Applicants respectfully request that the rejections to claims 9 and 10, which incorporate the features of independent claim 1, be withdrawn

Another example may be found with respect to claim 12. In particular, *Janda* does not disclose “wherein the device includes a computer display monitor,” as recited in claim 12 (emphasis added). The Office Action asserts that automobiles contain computer displays. Applicants respectfully traverse this apparent finding of well-known art and submit that the subject matter noted above should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support the conclusions, as required. The Manual of Patent Examining Procedure (MPEP) defines the standard for taking official notice. As provided in MPEP § 2144.03:

Official notice without documentary evidence to support an examiner’s conclusion is permissible only in some circumstances. While “official notice” may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424, F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be “capable of such instant and unquestionable demonstration as to defy dispute”

(citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

As provided in MPEP § 2144.03 (emphasis added):

If applicant adequately traverses the examiner's assertion of official notice, *the examiner must provide documentary evidence in the next Office action* if the rejection is to be maintained. See 37 CFR 1.104(c)(2).

For instance, Applicants do not understand what the Office Action considers a computer display, but respectfully submit that a "computer display" is not necessarily the same as a "computer display monitor," as recited in claim 12, which has a well-understood meaning to those having ordinary skill in the computer arts (*e.g.*, a cathode ray tube (CRT) device). Accordingly, Applicants traverse the Examiner's use of official notice. Because of this traversal, the Examiner must support his finding with evidence, or withdraw the official notice determination.

II. Claim Rejections - 35 U.S.C. § 102(b) (Branch, USPN 2,264,128)

A. Statement of the Rejection

Claims 1, 13 and 14 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by *Branch* ("*Branch*," U.S. Pat. No. 2,264,128). Applicants respectfully traverse this rejection.

B. Discussion of the Rejection

In the present case, not every feature of the claimed invention is represented in the *Branch* reference. As recited in independent claim 1, Applicants claim (with emphasis added):

1. An apparatus, comprising:
 - a frame;
 - a swivel mechanism, said swivel mechanism including a foot having a foot pad of a defined frictional coefficient in contact with a support surface, the foot pad configured with a material that enables rotation of the frame and impedes translational movement of the foot; and
 - secondary feet connected to the frame and disposed in locations surrounding the swivel mechanism, said secondary feet each having a pad of a lower frictional coefficient than the foot pad, ***wherein said secondary feet pads are configured with a material that enables rotation of the frame when supporting a device on the frame.***

Applicants respectfully submit that *Branch* fails to disclose the emphasized features. In particular, *Branch* does not disclose ***wherein said secondary feet pads are configured with a material that enables rotation of the frame when supporting a device on the frame***, as recited in claim 1. In contrast, *Branch* provides (first column, lines 8-10) that an object of the invention “is to provide such a board which cannot be rotated accidentally while in use.” (Emphasis added). In column 2, starting at line 27, *Branch* provides (with emphasis added) that the board “is naturally pushed down to compress the suction cup 12 and thus press the knobs 1 firmly into contact with the supporting surface. This prevents the board from either slipping or rotating with respect to the supporting surface during use.” Since *Branch* does not disclose the emphasized claim features, Applicants respectfully request that the rejection to independent claim 1 be withdrawn.

Because independent claim 1 is allowable over *Branch*, dependent claims 2-14 are allowable as a matter of law for at least the reason that the dependent claims 2-14 contain all elements of their respective base claim. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

III. Claim Rejections - 35 U.S.C. § 103(a)

A. Statement of the Rejection

Claim 8 has been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Janda* in view of *Paskiewicz* ("*Paskiewicz*," U.S. Pat. No. 6,467,746). Applicants respectfully traverse this rejection.

B. Discussion of the Rejection

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

In the present case, the proposed combination fails to disclose, teach, or suggest the claimed features. In particular, *Janda* does not disclose a *foot pad* that is *configured with a material that enables rotation of the frame and impedes translational*

movement of the foot, as recited in independent claim 1. Likewise, and as discussed in the previous Response (dated December 27, 2004), nothing in *Paskiewicz* indicates that the bearing plate (equated in the previous Office Action to a "foot") includes "*a foot pad* of a defined frictional coefficient in contact with a support surface, the foot pad configured with a material that enables rotation of the frame and impedes translational movement of the foot," as recited in independent claim 1. Because these claim features are incorporated into dependent claim 8, and since the proposed combination fails to meet these explicit claim features, Applicants respectfully submit that claim 8 is allowable over the proposed combination and that the rejection should be withdrawn.

Additionally, through the misconstruing of claim terms, *Janda* fails to disclose claim features and *Paskiewicz* fails to remedy these deficiencies. For example, *Janda* fails to disclose "secondary feet" and secondary feet "pads." As described in the previous Response, *Paskiewicz* discloses casters (230) that the Office Action equates to "secondary feet." However, the casters disclosed in *Paskiewicz* also do not include "pads." Thus, Applicants respectfully request that the rejection to claim 8, which incorporates the features of claim 1, be withdrawn.

It is interesting to note that the Office Action equated casters in *Paskiewicz* to "secondary feet," but in *Janda*, equates casters to "pads." This inconsistency in application further exemplifies the need to construe claim terms according to their ordinary meaning.

In summary, it is Applicants' position that a *prima facie* for obviousness has not been made against Applicants' claims. Therefore, it is respectfully submitted that each of these claims is patentable over the proposed combination and that the rejection of these claims should be withdrawn.

CONCLUSION

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. It is also noted that the use of Webster's on-line dictionary is used as an illustrative example of how to construe various claim terms according to an ordinary meaning, and is not intended to limit the claim scope. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Rodack', written over a horizontal line.

David Rodack
Registration No. 47,034